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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,112	04/07/2006	David Nocera	18917-10	8874
28221 7590 06/24/2009 PATENT DOCKET ADMINISTRATOR LOWENSTEIN SANDLER PC 65 LIVINGSTON AVENUE ROSELAND, NJ 07068			EXAMINER BECKER, SHASHI KAMALA	
			ART UNIT 2179	PAPER NUMBER
			MAIL DATE 06/24/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/542,112

Applicant(s)

NOCERA ET AL.

Examiner

Shashi K. Becker

Art Unit

2179

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-23 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 13 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/CIS)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date 11/21/05

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4, 11, 13, 17 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- In regards to claim 4, the claim language, "(minimized)," in line 1 is an indefinite as to whether the applicant is trying to claim a definition or example of "iconized." Furthermore, the claim limitation, "(e.g. X Windows)," in line 2, is indefinite as to whether the applicant is trying to claim X Windows or it is just an example.
- In regards to claim 11, the claim language, "(or drilldown)," in line 1 is an indefinite as to whether the applicant is trying to claim a definition or have an alternative to a "click." Furthermore, the claim limitation, "(which may be reflecting more applications or more metrics)," in line 3, is indefinite as to whether the applicant is trying to claim "which may be reflecting more applications or more metrics," or just giving an example or definition.
- In regards to claim 13, the claim language, "(e.g. Service Level Compliance)," in line 2, is an indefinite as to whether the applicant is trying to claim a definition or have an example.
- In regards to claim 17, the claim language "wherein the contact information including but not limited to a business owner and the a trouble ticket assignee is

displayable," is confusing whether the applicant is saying "the trouble ticket assignee" or "a trouble ticket assignee."

- In regards to claim 21, the claim language, "(e.g. hourly, weekly, monthly)," in line 2, is an indefinite as to whether the applicant is trying to claim a definition or have an example, and which example they're trying to claim.
- Claim 3, contains the trademark/trade name "Microsoft's Windows." Claim 4 contains the trademark/trade name, "Windows." Claim 14 contains the trademark/trade name, "Service Level Compliance." Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe *** and, accordingly, the identification/description is indefinite

3. Claim 20 recites the limitation "the historical performance" in claim 20 line 1.

There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-21 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Allen et al. (hereinafter Allen), US 20040032420.

- **In regards to claim 1**, Allen teaches A computer-implemented method of visually reporting the status of a resource having one or more status metrics associated therewith, said resource executing within a compute infrastructure (page 4 PP. [0038]-[0044]), said method comprising: generating a color changeable status icon associated with said resource (page 4 PP. [0038]-[0044]); associating a different color to said color changeable status icon to reflect the underlying state of said one or more status metrics (page 4 PP. [0038]-[0044]); comparing said one or more status metrics to a plurality of threshold conditions to determine the underlying state of said one or more status metrics (page 4 PP. [0038]-[0044]); displaying the appropriate color of said application status icon based on said comparison (page 4 PP. [0038]-[0044]).
- **In regards to claim 2**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the resource is used as a container for important metrics to be managed by the resource (page 4 PP. [0038]-[0044]).
- **In regards to claim 3**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the status icon is provided on a display device

associated with a device running Microsoft's Windows-based operating system; said icon is displayed as part of the Windows System Tray (page 4 PP. [0038]-[0044]).

- **In regards to claim 4**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the status icon is an iconized (minimized) Windows application or any application in a windowing environment (e.g. X Windows) (page 1 PP. [0016] and [0019]).
- **In regards to claim 5**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the metrics are configurable (page 1 PP. [0013] and page 4 PP. [0048]).
- **In regards to claim 6**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the conditions that trigger the changed state of a metric are configurable (page 4 PP. [0044]-[0049]).
- **In regards to claim 7**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the resource can manage other instances of itself, as a container of metrics or other instances of the resource (page 5 PP. [0061]-[0065]).
- **In regards to claim 8**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the specific colors of the status icon represent multiple levels of severity conditions (page 4 PP. [0038]-[0044]).
- **In regards to claim 9**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the specific shape or image of the status icon represents

multiple levels of severity conditions (page 4 PP. [0038]-[0044], directional arrows).

- **In regards to claim 10**, Allen teaches the limitations above (see claim 1). Allen further teaches herein the status icon is modifiable and animated (page 1 PP. [0013] and page 4 PP. [0048]).
- **In regards to claim 11**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein a click (or drilldown) on the icon shows at least one list of icons that contain either at least one metric, or at least one icon representing another instance of the application (which may be reflecting more applications or more metrics) (page 2 PP. [0026]).
- **In regards to claim 12**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the one or more metrics are determined as a result of running tests on a compute infrastructure (page 4 PP. [0038]-[0044] and page 5 PP [0061]—[0065]).
- **In regards to claim 13**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein a single test can aggregate the results of multiple important items, into a metric of higher importance (e.g. Service Level Compliance) (page 4 PP. [0038]-[0044] and page 5 PP [0061]—[0065]).
- **In regards to claim 14**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein said one or more metrics are the result of queries to a predefined dynamic updatable database (page 1 PP. [0015] and page 2 PP. [0019]-[0021]).

- **In regards to claim 15**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the display name of the test, as viewed by the user, can be different from the actual test name as required to gather information (page 1 PP. [0013] and page 4 PP. [0048]).
- **In regards to claim 16**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the details describing the test and thresholds are configurable (page 1 PP. [0013] and page 4 PP. [0048]).
- **In regards to claim 17**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the contact information including but not limited to a business owner and the a trouble ticket assignee is displayable (page 1 PP. [0013] and page 2 PP. [0018] and [0022]).
- **In regards to claim 18**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein an Alert, Alarm or Fault is associated with each metric, coming from one of many trouble ticket systems (page 2 PP. [0023]).
- **In regards to claim 19**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the status of the Alert, Alarm or Fault is tracked, including but not limited to Alert Level, Priority, Creation Data, Ticket Number, Assignee (page 2 PP. [0021] and Figures 18 and 19 and page 4 PP. [0038]-[0044]).
- **In regards to claim 20**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the historical performance of the metric can be observed (page 2 PP. [0021] and Figures 3 and 6).

- **In regards to claim 21**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein multiple levels of historical performance. can be observed (e.g. hourly, weekly, monthly) (page 2 PP. [0021] and Figures 3 and 6).
- **In regards to claim 23**, Allen teaches the limitations above (see claim 1). Allen further teaches wherein the status icon consists of graphics, text, video, audio or a combination thereof (page 4 PP. [0038]-[0044]).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
8. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen et al. (hereinafter Allen), US 20040032420.

In regards to claim 22, Allen teaches the limitations above (see claim 1). However, Allen does not specifically teach wherein the status icon can be located anywhere on the display device. Allen does teach the display being customizable and the tables and benchmarks and data can be displayed in various areas on the screen (page 3 PP. [0029]). It would have been obvious to one of ordinary skill in the art at the time of the invention to make the status icon located anywhere on the screen if it already has various options for customizations of display placement. One would have been motivated in order for users to customize their reports tailored to their business size and industry and to allow them to identify more easily and accurately areas of strength and weakness based on the benchmark data (page 1 PP. [0013]).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shashi K. Becker whose telephone number is 571-272-8919. The examiner can normally be reached on Mon-Fri 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 571-272-4847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shashi K Becker/
Examiner, Art Unit 2179

/Ba Huynh/
Primary Examiner, Art Unit 2179